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# Corporate & Financial Weekly Digest

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### Fiduciary Duty Claim Survives Against Non-Officer

*Co-authored by Gregory C. Johnson*

A federal court in Kentucky recently ruled that a former manager at a medical device manufacturer could be liable for breach of fiduciary duty for planning to start a rival business while working at the company despite not serving as either an officer or director of the firm.

FBK Partners, Inc., a manufacturer of medical tubing, changed ownership and saw two high-ranking employees depart to start a rival business. FBK sued the former employees for breach of fiduciary duty for, among other things, allegedly planning to launch their company while working at FBK and for recruiting other FBK employees.

One of the former employees, who had been a plant manager and machine operator at FBK, sought dismissal of the breach of fiduciary duty claim, arguing that he did not owe FBK any fiduciary duties because he was neither an officer nor director. The U.S. District Court of the Eastern District of Kentucky held that while officers and directors are presumed to owe their companies fiduciary duties, other employees can owe fiduciary obligations if sufficient trust or confidence with respect to the particular matter is placed in the employee. To determine if such trust or confidence has been placed in an employee, a court will look to the specific factual circumstances to determine if, for example, the employee had “oversight and control over office operations and access to confidential information” or “acted as a face for the company in public.” Because the specific nature of the former employee’s duties was not clearly established in the record, the court denied the employee’s motion for summary judgment dismissing the breach of fiduciary duty claim. (*FBK Partners, Inc. v. Thomas*, 2010 WL 4940056 (E.D. Ky. Nov. 30, 2010))

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